

STATEMENT OF SCOPE

MEDICAL EXAMINING BOARD

Rule No.: Med 18

Relating to: Informed Consent

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The proposed rule will amend Wis. Admin. Code s. Med 18 to make it consistent with new legislation, 2013 Wisconsin Act 111.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

2013 Wisconsin Act 111 impacts Wis. Admin. Code s. Med 18 by changing the manner in which Wisconsin physicians discuss alternate modes of treatment with their patients. Before the Act, physicians had a duty to inform their patients of all alternate, viable medical modes of treatment and about the benefits and risks of those treatments. Physicians were held to the reasonable patient standard, espoused by the Wisconsin Supreme Court, which provided physicians were to inform their patients of all information necessary for a reasonable person in the patient's position to make an intelligent decision with respect to the choices of treatment. Since the enactment of 2013 Wisconsin Act 111, physicians have a duty to inform their patients of all reasonable alternate medical modes of treatment and their risks and benefits instead of all alternate, viable medical modes of treatment. The legislation sets forth the reasonable physician standard, which requires disclosure only of information that a reasonable physician in the same or similar medical specialty would know and disclose under the circumstances. The proposed rule would amend Wis. Admin. Code s. Med 18 by incorporating the reasonable physician standard into the rule and making all such changes that would make the rule consistent with the statute.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 15.08 (5) (b), provides examining boards, such as the Medical Examining Board, "shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains," The proposed rule seeks to provide guidance within the profession on how physicians are to conduct their duty to inform patients of alternate modes of treatment.

Section 227.11 (2) (a), Stats., discusses the parameters of an agency's rule-making authority, stating an agency, "may promulgate rules interpreting the provisions of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation. . . ." This section allows an agency to promulgate administrative rules which interpret the statutes it enforces or administers as long as the proposed rule does not exceed proper interpretation of the statute. Section 227.01 (1), Stats., defines agency as a board. The Medical Examining Board falls within the definition of agency and is therefore allowed to apply s. 227.11 (2) (a) to statutes it administers.

The proposed rule seeks to interpret s. 448.30, Stats., which provides,

Any physician who treats a patient shall inform the patient about the availability of reasonable alternate medical modes of treatment and about the benefits and risks of these treatments. The reasonable physician standard is the standard for informing a patient under this section. The reasonable physician standard requires disclosure only of information that a reasonable physician in the same or a similar medical specialty would know and disclose under the circumstances. The physician's duty to inform the patient under this section does not require disclosure of:

- (2) Detailed technical information that in all probability a patient would not understand.
- (3) Risks apparent or known to the patient.
- (4) Extremely remote possibilities that might falsely or detrimentally alarm the patient.
- (5) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.
- (6) Information in cases where the patient is incapable of consenting.
- (7) Information about alternate medical modes of treatment for any condition the physician has not included in his or her diagnosis at the time the physician informs the patient.

Section 448.40 (2) (a), Stats., sets forth the legislature's express grant of authority to the Medical Examining Board to promulgate rules implementing s. 448.30, Stats.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

State employees will spend approximately 50 hours developing this proposed rule.

6. List with description of all entities that may be affected by the proposed rule:

The proposed rule will affect licensed physicians, licensed physician assistants and their patients and those persons who hold temporary educational permits to practice medicine and surgery.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule is not likely to have significant economic impact on small businesses.

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Department Head or Authorized Signature

Date Submitted